


COMMONWEALTH OF VIRGINIA  
Department of Environmental Quality  
Division of Water Quality Programs  
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SUBJECT: Guidance Memo No. 05-2008  
Determining Eligibility and Issuance of the VPA General Permit Regulation for Animal Feeding Operations, 9 VAC 25-192-10 et seq.

TO: Regional Directors

FROM: Ellen Gilinsky, Ph.D., Director 

DATE: May 17, 2005

COPIES: Regional Water Permit Managers, Regional Water Compliance Managers, Amy Owens, OWPP Staff, Cindy Berndt

**Summary:**

This memo clarifies the procedures used to determine eligibility and subsequently issue coverage under the VPA General Permit Regulation for Animal Feeding Operations (AFOs). This general permit was modified and re-issued on November 16, 2004.

This guidance replaces memos nos. 99-2001, 00-2005, and 01-2019.

**Electronic Copy:**

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET, and for the general public on DEQ's website at: <http://www.deq.virginia.gov/water>.

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**DISCLAIMER**

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

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## **Determining Eligibility and Issuance of the VPA General Permit Regulation for Animal Feeding Operations (AFOs)**

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### General

The VPA General Permit Regulation for Animal Feeding Operations (VPA AFO) General Permit was re-issued on November 16, 2004 after the original 10-year permit expired. The re-issued General Permit will retain the 10-year life, and expires on November 15, 2014.

Amendments to the VPA AFO (9 VAC 25-192) became effective on November 3, the day on which the APA process was concluded for these changes. The amendments affect all VPA AFO general permits issued after November 16, 2004. For those AFOs applying for general permit coverage prior to January 1, 2006, eligibility requirements are not affected by the amendments.

All AFOs that meet the definition of Concentrated Animal Feeding Operation (CAFO) will be covered under the VPA AFO permit for the period between November 16, 2004 and December 31, 2005. CAFOs may require transfer of permit coverage to the VPDES CAFO permit program that becomes effective on January 1, 2006. Further guidance on issuance of VPDES CAFO permits will be drafted once EPA determines its response to the February 28, 2005 U.S. Court of Appeals decision regarding the federal CAFO rule.

The following are explanations relevant to specific topic areas in the VPA AFO general permit regulation.

### 1. Definition of Animal Feeding Operation

The definition of an AFO was modified to match that in the federal regulation [40 CFR § 122.23 (b)(1)]. This definition replaces that of “confined animal feeding operation”, a term used in the previous version of the VPA regulation and VPA general permit regulation. The terms “confined animal feeding operation” and “concentrated confined animal feeding operation” are no longer used. The definition of “confined animal feeding operation” is retained in the definitions section due to the presence of this term in the Code of Virginia. The VPA regulation (9 VAC 25-32) is being amended so that the definitions are consistent.

“Animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

The 45 days of confinement do not have to be 45 consecutive days, and the 12-month period can be any consecutive 12-months. Any duration confinement during a day will constitute one day of the 45 day period (i.e. animals need not be confined for a 24 hour period to be considered confined for one day). Dairy cows housed in a parlor during milking are considered confined. In general, if manure is collected from a lot or facility, animals are considered confined there unless the vegetative conditions are met.

Condition #2 does not mean that any vegetation at all in a confinement area would eliminate an operation from being defined as an AFO. For example, a confinement area like a pen or feedlot that has only incidental vegetation would still be an AFO if animals are confined therein for at least 45 days in a 12-month period.

In the case of a winter feedlot, the “no vegetation” criterion in the AFO definition is meant to be evaluated during the winter, when the animals are confined. Therefore, use of a winter feedlot to grow crops or other vegetation during periods of the year when animals are not confined would not exclude the feedlot from meeting the definition of an AFO, as long as animals are confined there in the winter for 45 days or more.

## 2. General Permit Eligibility and Definition of 300 Animal Units

The determination of animal units is made for purposes of permit eligibility only. The numbers computed here may or may not be the numbers included in the facility's Nutrient Management Plan (NMP), as the NMP may reference a lower, average number of animals. The numbers of animals included in the 300 animal unit determination must all be confined. Animals on pasture or otherwise confined for less than 45 days are not included in the computations.

The definition of 300 animal units specifies the numbers, types, and weight of animals that are included in this designation.

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

If the types of animals confined at a facility are included in the preceding list, the determination as to whether or not the facility confines 300 animal units shall be based on the numbers alone, regardless of weight (with the exception of the specific weight criterion associated with swine). If a facility houses animals that are not described in this list, the determination of total animal units is to be calculated using the following AU equation:

$$[\text{total animals} \times \text{average animal weight in lbs} / 1000] = \text{total AUs}$$

If the number of confined animals varies throughout the year, the total animal numbers (for purposes of determining whether or not 300 AUs are present) should be determined based on the 45 highest population days. In other words, 300 animal units must be present for at least 45 days.

In the case of swine nurseries, the average weight of the animals will be less than 55 lbs. However, if there are at least 750 animals at the end of the growth cycle that exceed 55 lbs, and this condition exists for at least 45 days per year (these do not have to be consecutive days), then the facility would qualify for the general permit.

For dairy operations that do not meet the threshold number of 200 mature dairy cattle, the ratio of 1.5 AU per mature dairy cow will be used, regardless of breed, whether milked or dry. This is consistent with the equivalency of 300 AUs to 200 mature dairy cows stated in the regulation. It is also consistent with the federal CAFO rule that defines permit eligibility based on cow numbers alone, rather than weight. To be included in the total, dry cows must be confined. Animal units for other confined groups (i.e. heifers, calves, etc.) will be calculated using the AU equation specified above.

The total confined animal units to be considered for permit eligibility is the sum of animal units contained in all confined groups.

Eligibility for this general permit is not affected if less than 300 AUs contribute to the liquid manure storage. The facility is eligible if 300 AUs are confined for 45 days or more, and liquid manure storage is used for any portion of the manure collected.

If an AFO does not use a liquid manure collection and storage system and is a potential or actual contributor of pollution to state waters, then coverage under an individual VPA or VPDES permit may be in order. See 9 VAC25-32-250 B and 9 VAC25-31-130 B regarding designation of facilities that are significant contributors of

pollution to state waters.  
See Appendix A for specific examples of eligibility determination.

### 3. Registration Statement

The registration statement for the VPA AFO general permit has been modified to include information required for VPDES CAFO registration. This information is included on page 2 of the registration statement, and is intended to be completed by registrants whose facilities meet the definition of large or medium CAFO, and are thus required to submit VPDES registration information by January 1, 2006. If the registrant submits this completed information, they will not be required to submit a separate VPDES CAFO registration statement at a later date.

The number of animals listed on the registration statement should be interpreted to be a maximum number, not necessarily the number of animals actually confined. The registration statement is intended to represent a declaration of the numbers of animals that could be present, and a representation to the local government to check against local ordinances.

Permit compliance regarding animal population should focus on the numbers included in the NMP. Variances between the registration statement and the NMP are acceptable as long as the NMP animal numbers do not exceed those listed on the registration statement.

Notification of adjacent property owners or residents of the registration statement and submittal of a current Local Government Ordinance Form (LGOF) with the registration statement are required if any of the following conditions are true:

1. The number of animals at the facility is proposed to be more than 10% greater than the number submitted on the registration statement for a previous general permit. The notification of adjacent property owners need only include those owning property adjacent to the animal housing facilities and waste storage structures.
2. There are new animal housing structures proposed to be constructed as part of an expansion. This does not include replacement of aged structures or those destroyed by fire, wind, flood, or other disasters, unless the replacement structure is to be built in a different location from the original. The notification of adjacent property owners need only include those owning property adjacent to the parcel where the new animal housing structure(s) will be located.
3. There are new waste storage facilities proposed to be constructed that will alter the existing waste storage and/or treatment process. Construction of a secondary lagoon should be considered a new waste storage facility that requires adjoining landowner notification. Not included is repair or replacement of existing failed or damaged structures, unless the replacement structure is to be built in a different location from the original. The notification of adjacent property owners need only include those owning property adjacent to the parcel where the new waste storage and/or treatment facilities will be located.
4. The quantity of pollutants proposed to be managed is greater than that previously permitted. Quantity refers to physical volume or total mass. The notification of adjacent property owners need only include those owning property adjacent to the parcel where the animal housing facilities and waste storage and/or treatment facilities are located.
5. New pollutants are proposed to be managed.
6. New land application sites are proposed to be added. This does not include land application sites that are currently permitted under another VPA AFO, VPA Poultry, or VPDES CAFO permit. The notification of adjacent property owners need only include those owning property adjacent to the new land application site(s).

When considering which property owners must be notified, property separated from the facility by a public right-of-way should be considered adjacent.

Submittal of a current Local Government Ordinance Form (LGOF) is always required when the facility has not previously been issued a VPA or VPDES permit. If the facility was previously covered by a VPA general permit, but there has been a lapse in coverage prior to a current request for coverage, the DEQ should encourage the facility obtain a new LGOF in order to ensure that local abandonment clauses have not been violated. DEQ cannot require a new LGOF because the regulation states that an LGOF is not necessary if the pollutant management activities were previously issued a valid VPA permit.

Notification of adjacent property owners or residents of the registration statement (without an LGOF) is required if any of the following conditions is true:

1. There has been a lapse in coverage (excluding administrative continuance) between the expiration or revocation date of the previous permit and the effective date of the new VPA AFO general permit. This is necessary to account for new property owners that may have purchased land adjacent to the facility during the time when the permit was inactive, or no animals occupied the facility.
2. The facility is applying for coverage under the VPA AFO general permit for the first time. If the facility was previously covered by another type of permit, the VPA AFO general permit is generally less stringent than other permits that could be issued to AFOs, thus the modified permit conditions may affect adjacent landowners.
3. The facility is subject to a current consent order or special order relating to violations under the existing permit. If all of the requirements of a historical consent order have been satisfied, this specification does not apply.

If the notice to adjacent landowners is made due to a change in the operation, the notice should include a description of what is being modified (i.e., location of new land application sites or structures, size of expansion, etc.).

The certification on the registration statement includes the adjoining property owner notification requirement. If the operator signs the certification, the legal mandate is satisfied. The operator need not submit copies of the notification letters.

#### 4. Renewal of the General Permit After Reissuance

Eligibility requirements for the general permit are the same if a facility desires to renew their permit after reissuance. A facility may renew the general permit even if the facility is empty at the time of renewal, so long as the intent is to permit confinement of 300 or more animal units. This scenario is similar to a brand new facility that obtains a permit prior to the final population date.

If a permitted facility does not submit a complete registration package for renewal, the permit is terminated upon the expiration date. The permit may be administratively continued if the registration process has been initiated, but not yet complete due to circumstances beyond the facility's control. An example might include waiting for NMP approval from DCR.

#### 5. Facility property that spans state lines

An animal feeding operation that owns property in Virginia as well as a bordering state will qualify for VPA general permit coverage if 300 animal units are confined in Virginia and any portion of the liquid waste is stored in Virginia. If a facility applies all or a portion of the liquid waste on property outside the Virginia, a general permit may still be issued; however, the fields outside Virginia must be included in the NMP. If the facility wishes that the NMP exclude out-of-state land application fields, then the AFO is not eligible for the general permit.

## 6. Public Comments

DEQ must accept public comments for 30 days after the registration statement is filed by the owner. If any comments show that the proposed operation will not comply with the general permit, the Director shall require an individual permit. DEQ has 45 days from the registration statement filing date to make a decision on general permit coverage or an individual permit. The region can take up to 60 days if the Director decides additional time is needed.

Regions will have to track receipt of registration statements, evaluate public comments received during the following 30 days and then decide on issuing general permit coverage within 15 days thereafter. The 45 day period allowed to DEQ for making a decision on coverage should begin on the date the completed registration statement is received by the regional office. Having the registration statement date stamped upon receipt will document the start of the 45 days. If the region needs up to 60 days to decide on coverage, some documentation of the extension beyond 45 days should be in the file. This extension should be granted only by the Director or someone in the regional office with delegated program authority.

The law does not anticipate public participation in the region's decision beyond the 30 day comment period. There is no provision for a public hearing based on the comments received on the general permit registration statement. The region should review the public comments on the basis of whether or not the operation to be covered can comply with the requirements of the general permit. If the decision is to require an individual permit, then a public hearing may be granted following public notice of the draft individual permit.

The public comment period is required by the regulation, regardless of whether or not adjacent landowner notification was required. Receipt of all complete registration statements will be posted on DEQ's website in order to address this issue. The 30-day comment period will always begin with the filing of the complete registration statement, not the date that the notice is posted on the website.

## 7. Nutrient Management Plans

All NMPs must be revised by December 31, 2006 to include the most recent phosphorus management criteria adopted by Virginia DCR. The regulation also specifies that all plans revised after December 31, 2005 will include phosphorus as well as nitrogen limits. Based on this language, a NMP based on nitrogen alone, with no phosphorus application limits specified, will expire on December 31, 2006 regardless of the revision date. VA DCR is expecting to complete amendments to the Nutrient Management Training and Certification regulation in 2005. This regulation will determine the nature of phosphorus limits to be included in the revised NMPs.

All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. This shall be documented by a letter from DCR, and this documentation may be included in the approval letter. The previous permit only specified that the NMP be approved by DCR.

## 8. Submittal of the NMP

Registration statements for coverage under the VPA AFO general permit should not be accepted as complete without an approved NMP. When the NMP is revised every three years, the revised version should be copied to DEQ. New NMPs and DCR approval letters should come in whenever a registration statement is submitted for an expansion.

If an event occurs that requires submittal of a registration statement, and the NMP to be submitted is identical to that currently held by the DEQ regional office, then in lieu of submitting an additional copy, the operator may indicate to the regional staff that the copy of the NMP currently held by DEQ is that which should accompany the registration statement.

## Appendix A – Examples of General Permit Eligibility

### Example 1 – Eligible Dairy

A dairy owned by Joe Farmer has 340 animals. 250 cows are milked. Of the 250 that are milked, 150 head are confined in a barn, and 100 head have use of an adjoining pasture. Of the 90 head that are not milked, there are 30 mature dry cows and 60 heifers that are pastured. No other animals are fed with the milked cows. This farm has a liquid waste system with a 300,000-gallon capacity pit that handles manure and parlor washwater.

- 1) 250 cows milked = Over 200 mature dairy cattle
- 2) This farm has a pit (liquid storage) that receives waste.

Are 300 or more animal units confined for more than 45 days? **Yes** - 250 mature dairy cattle are confined (milking = confinement), and 300 animal units is defined by at least 200 mature cows.

Does the operation utilize a liquid manure collection and storage system? **Yes**

This dairy operation is eligible to be covered under the general permit.

### Example 2 – Ineligible Dairy

Same case as Example 1, except the farm has 280 animals. 190 cows are milked. Of the 190 that are milked, 100 head are confined in a barn, and 90 head have use of an adjoining pasture. Of the 90 head that are not milked, there are 25 mature dry cows and 65 heifers that are pastured.

- 1) 190 cows X 1.5 AUs/cow = 285 AUs
- 2) This farm has a pit (liquid storage) that receives waste.

Are 300 or more animal units confined for more than 45 days? **No** – Only 190 cows are milked (< 200) and this equates to only 285 AUs confined.

Does the operation utilize a liquid manure collection and storage system? **Yes**.

This dairy operation is not eligible to be covered under the general permit. Insufficient animal units are confined. The 90 head that are pastured and not milked do not count toward the total AUs for VPA purposes, because they are not confined and are not contributing to the waste storage system.

However, if this facility has plans for future expansion, submittal of a registration statement with at least 300 AUs listed is appropriate, and issuance of an AFO general permit would be warranted. While a registration statement must be submitted at least 180 days prior to commencing permitted activities, there is no established maximum time between submitting the registration statement and actually adding the new animals to the farm.



### Example 3 – Eligible Dairy

Martin Farms, Inc. operates a 290-head dairy. 190 cows are milked and confined in a barn. The barn floor is concrete and manure is pushed to a drop box, where it is flushed with parlor washwater and/or recycled wastewater, into an earthen storage facility. 30 mature dry cows that are pastured next to the barn are fed every day in one end of the barn, and their manure is also pushed to the drop box. 70 heifers are pastured and not fed in the barn. The farm buys other replacement heifers from a neighboring farm as needed.

1) 190 head milked X 1.5 AUs / cow	= 285 AUs
30 mature dry cows fed X 1.5 AUs / cow	= 45 AUs
Total	= <u>330 AUs</u>

- 2) This farm has a pit (liquid storage) that receives scraped manure and parlor washwater.

Are 300 or more animal units confined for more than 45 days? **Yes** - 330 AUs are confined and contribute to the liquid waste storage system. The 30 dry cows being fed each day are considered confined since they spend enough time in the barn to deposit manure that is collected.

Does the operation utilize a liquid manure collection and storage system? **Yes**

This dairy operation is eligible to be covered under the general permit.

### Example 4 – Eligible Dairy

Same as Example 3, but the 30 mature dry cows are confined in one end of the barn and their manure is dry-stacked and land applied.

1) 190 head milked X 1.5 AUs / cow	= 285 AUs
30 mature dry cows fed X 1.5 AUs / cow	= 45 AUs
Total AUs	= <u>330</u>

- 2) This farm has a lagoon/pit (liquid storage) that receives scraped manure and parlor washwater.

Are 300 or more animal units confined for more than 45 days? **Yes** - 330 AUs are confined. Only 285 AUs contribute to the liquid waste storage system, but the 30 dry cows contributing to the dry stack are also confined.

Does the operation utilize a liquid manure collection and storage system? **Yes**

This dairy operation is eligible to be covered under the general permit. The fact that only 285 AUs contribute to the liquid storage system does not affect permit eligibility.

#### Example 5 – Eligible Dairy

Sam Jones and Sons, Inc. operates a 360-head dairy. The farm milks 220 cows and dry-stacks their manure for land application. Parlor washwater is stored in two 6,000-gallon tanks and is land applied. Of the 140 head not milked, 70 are dry cows and 70 are young heifers, all of which are pastured and not confined.

- 1) 220 head milked (greater than 200 mature dairy cattle)
- 2) This farm has a liquid waste collection and storage system for the parlor washwater only

Are 300 or more animal units confined for more than 45 days? **Yes** 220 mature dairy cattle are milked (confined) and contribute to the liquid waste storage system.

Does the operation utilize a liquid manure collection and storage system? **Yes.**

This dairy operation is eligible to be covered under the general permit.

For VPA purposes, any liquid manure collection and storage system (manure or parlor washwater) will satisfy the requirement of the general permit. In order to comply with the general permit, the facility must have adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, or periods when there is little or no crop nutrient uptake. Usually, this means 120 days of storage, unless the Department of Conservation and Recreation approves otherwise in a Nutrient Management Plan. In this example, if the operation did not have a sufficient parlor washwater plan or storage according to DCR, then it would not be eligible for coverage under the general permit, but must be covered under a VPA individual permit with a schedule for compliance, because the number of confined mature dairy cattle is greater than 200, and the law requires such operations be covered by a VPA permit.

#### Example 6 – Ineligible Dairy

Just like example 5 except a 290-head dairy. The farm milks 170 cows and dry-stacks their manure for land application. Parlor washwater is stored in two 6,000-gallon tanks and is land applied. Of the 120 head not milked, 60 are dry cows and 60 are young heifers, all of which are pastured and not confined.

- 1) 170 head milked X 1.5 AUs / cow = 255 AUs
- 2) This farm has a liquid waste collection and storage system for the parlor washwater only

Are 300 or more animal units confined for more than 45 days? **No** – Only 170 cows or 255 AUs are confined.

Does the operation utilize a liquid manure collection and storage system? **Yes**

This dairy operation is not eligible to be covered under the general permit due to insufficient confined animals. But just as in example 5, the State Water Control Law requires no discharge to State waters for manure or parlor washwater.

#### Example 7 – Eligible Dairy

Clearbrook Farm, Inc. operates on both sides of Rt. 600 in Rural County, Virginia. On one side of the road, the farm milks 140 barn-housed cows and has earthen storage for manure and parlor washwater. Twenty-five dry cows are pastured on this side of the road, and are not fed under confinement. On the other side of the road, heifers and beef feeder cattle are fed in a barn lot that was part of the original dairy operation. The barn lot is used in the winter months for approximately 120 days. Manure is pushed and stacked for land application. Three groups of animals are fed: 1) 50 young heifers (avg. wt. 600 lbs), 2) 50 older heifers (avg. wt. 1000 lbs), and 3) 40 beef feeder cattle (avg. wt. 1000 lbs). All of the farm's acreage is utilized for the land application of manure generated on both sides of the road.

1) 140 head milked X 1.5 AUs / cow	=	210 AUs
2) (50 young heifers X 600 lbs/cow) / 1000	=	30 AUs
3) (50 older heifers X 1000 lbs/cow) / 1000	=	50 AUs
4) (40 beef feeder cattle X 1000 lbs) / 1000	=	40 AUs
Total Confined AUs	=	<b><u>330 AUs</u></b>

- 5) This farm has a liquid waste collection and storage system for manure and parlor washwater.

Are 300 or more animal units confined for more than 45 days? **Yes** – 330 AUs are confined in some way.  
Does the operation utilize a liquid manure collection and storage system? **Yes**.

This dairy operation is eligible to be covered under the general permit. The fact that only 210 AUs contribute to the liquid storage system does not affect permit eligibility. If the 40 beef feeder cattle in this example were pastured and not fed on the lot, then this operation would not be eligible for the general permit, because only 290 AUs would be considered confined.

The VPA AFO General Permit Regulation states that “two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area [manure application fields] or system for the disposal of wastes”. This example meets both of the above conditions. Also, in this example, the nutrient management plan would most likely be written for the entire operation.

#### Example 8 – Eligible Swine Nursery

A swine nursery consists of 6 confinement buildings that house 960 animals each for a total of 5760 pigs. A two-stage lagoon is used to treat and store wastewater from the buildings. The production strategy at this facility is that weaned pigs are received that weigh approximately 12 lbs, and pigs are transferred to a finishing facility when they reach approximately 60 lbs. Each group of pigs stays at the nursery approximately 53 days.

The average weight of the pigs at this facility is 36 lbs, much less than the 55 lb lower limit specified by the general permit regulation. However, there are approximately 6 turns, or growth cycles, of animals per year. At the end of each turn, each building will contain approximately 912 feeder pigs (assuming 5% mortality) that weigh over 55 lbs for at least a week. If this house is emptied at least 6 times during a 12-month period, there would have been 912 pigs per building weighing over 55 lbs for a total of 42 days (6 turns X 7 days). Multiplied over 6 confinement buildings, more than 750 pigs weighing over 55 lbs are present on this farm for at least 45 days.

This facility is eligible for the general permit.

In this case, the production strategy plays a significant role in the scenario. If pigs are sent to finishing farms at 50 lbs, then it is less likely that there would be enough heavier animals present to meet the general permit criteria.